IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918

R. A. Flanders, Trustee of M. C. Coleman, Bankrupt,

Appellant,

vs.

Elisha J. Coleman,

Appellee

No. 984

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF GEORGIA

MOTION BY R. A. FLANDERS, TRUSTEE OF M. C. COLEMAN, APPELLANT, TO PLACE ON THE SUMMARY DOCKET

Comes now the Appellant, R. A. Flanders, Trustee of M. C. Coleman, bankrupt, and respectfully moves the Court to place the above entitled cause on the summary docket.

STATEMENT

R. A. Flanders, Trustee of M. C. Coleman, bankrupt, filed a bill in the District Court of the United States, Southern

District of Georgia, against Elisha J. Coleman, adverse claimant of certain realty. The purpose of the bill was to require restitution of the possession of certain real property and the abiding by the decree of the Court sought, ordering the respondent to convey the paper title to the property to the Trustee, the legal title to the land being vested in the bankrupt.

It was alleged by the complainant Trustee, that in 1902 the respondent, then owner of the land, gave it to his son, M. C. Coleman, verbally, and the latter entered into possession and continued this possession by himself and tenants until 1915, and until two months prior to the filing of his voluntary bankruptcy proceedings, expending large sums in permanent improvements and obtaining credit on representations that the land was his. Two months prior to filing such bankruptcy proceedings, M. C. Coleman, while insolvent and with intent to hinder, delay and defraud his creditors, transferred by delivery, four rent notes made by Dan Davis, his tenant, evidencing the rents of this land then owned by him, maturing October 1915, 1916, 1917, 1918, for the sum of $1,000.00 each, payable to M. C. Coleman, landlord, or bearer, unto Elisha J. Coleman, the respondent, and that the said M. C. Coleman then and there orally disclaimed title to the land and to the rents thereof, and respondent assumed possession of the land and denied the Trustee's right to the same.

The Georgia statute provides that seven years exclusive possession of land formerly belonging to the father, without payment of rent, and without exercise of dominion over the land by the father, and without disclaimer by the child **shall convey title to the child,**—and conclusively presumes a gift. Georgia Code 1910, Sec. 4151.

The case was fully considered, evidence having been submitted on the merits, and the lower court held that as no formal conveyance of title by deed was made by M. C. Coleman to E. J. Coleman, that the lower court was without

jurisdiction to grant any relief to the complainant, and dismissed the bill without prejudice to the right of the complainant to institute suit in the proper State court.

The complainant appealed directly to this Court on the jurisdictional question alone.

The Bankruptcy Act, Sec. 1, sub-section 25, defines a transfer, as every mode of parting with property or the possession of property. And Sections 67-e, and 70-e, of the Bankruptcy Act confer jurisdiction on the District Court of an action by a Trustee in bankruptcy to set aside any transfer by a bankrupt made with intent to hinder, delay or defraud creditors, or any transfer by bankrupt which creditors under the State law may avoid, and to recover the property so transferred.

It is submitted that the question involved is solely the construction of a statute, that is whether the surrender of the possession of real estate by a debtor to a third person within four months immediately preceding the filing of his bankruptcy proceedings, and the assumption of possession by such third person with the intent to withhold the possession against the rights of creditors of the debtor and to hinder, delay and defraud them constitutes such a transfer as would vest jurisdiction in the Federal Court to grant relief to the Trustee, and is a question which would not require extended argument.

For the above reasons the case should be placed on the summary docket.

Notice of this motion has been served on opposing counsel.

Respectfully submitted,

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Trustee of M. C. Coleman.

January ---, 1919.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

R. A. FLANDERS as Trustee in Bankruptcy of M. A. Coleman, Bankrupt,
Appellant,

vs.

ELISHA JORDAN COLEMAN,
Appellee.

No. 984

APPEAL FROM THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF GEORGIA.

BRIEF OF THE APPELLANT.

I.

SYLLABUS.

The United States District Court has jurisdiction of a plenary proceeding in equity brought by a trustee in bankruptcy against an adverse claimant (the trustee, the bankrupt and the adverse claimant being citizens of the same

State in which the action is filed) to recover four rent notes of the aggregate value of $4,000.00, payable to the bankrupt or bearer, and by him fraudulently transferred to the adverse claimant within four months prior to his bankruptcy, and to recover the land the subject matter of the rent notes, which at the same time was fraudulently disclaimed by the bankrupt in favor of the adverse claimant who had the bankrupt's tenant attorn to him, who collected the rents of the land and otherwise exercised acts of ownership and who resisted the trustee's demand to yield up the same for administration in bankruptcy.

II.

STATEMENT OF THE CASE.

As a general rule title to land in Georgia can be acquired only by writing, "but to this rule there are exceptions." One exception is, after a child is allowed to hold a father's land under certain conditions, for seven years, the law conclusively presumes a gift. Code 2664. And a child or any other donee within the range of a meritorious consideration, may compel the specific performance of a voluntary agreement if possession has been given under the agreement, and the donee has made valuable improvements upon the faith thereof. Code 3189." (These sections refer to Code of 1882).

Harvey vs. West, 87 Ga., 557.

We cite these principles, which may be peculiar to the law of Georgia for they are necessarily involved in the jurisdictional question which is before the Court.

In 1902 or 1903, M. C. Coleman, the bankrupt, married, and at that time his father E. J. Coleman, one of the largest land owners in that county (Record, page 50), the appellee,

placed him in possession of a tract of land partly cultivated, promising to give him the land, and telling him, "he could have it if he took it in." (Record, page 31, bottom of page). By 1905 permanent improvement of a substantial nature had been erected on the land by M. C. Coleman, (Record, page 44, bottom page (p. 45, top page), and in August, 1905, E. J. Coleman had the special tract surveyed by one Gillis, who made a plat of the land with the son's name on the same, and delivered it to E. J. Coleman. E. J. Coleman told the surveyor that the land was for M. C. Coleman. (Record, p. 26, middle of page). The son, M. C. Coleman, continued in the exclusive and uninterrupted possession and enjoyment of this land through himself and tenants until the latter part of January, or in February or at least within two months prior to May the 8th, 1915 (Record, p. 31, bottom of page, Record, p. 33), on which last named date (Record, p. 12) he filed voluntary bankruptcy proceedings in the Federal Court in Georgia, and was promptly adjudged bankrupt. R. A. Flanders the appellant was elected trustee of his estate. (Record, p. 38).

In 1913 M. C. Coleman as landlord and holding out as owner rented this land for five years to Dan Davis taking rent notes payable $1,000.00 per annum. M. C. Coleman states that the transaction which we now allude to took place within two months prior to his bankruptcy. (Record, p. 33, lines 27 and 28). E. J. Coleman says it took place the latter part of January or in February, 1915.

M. C. Coleman according to his own testimony within two months of his bankruptcy, and certainly at least within five months of his bankruptcy, sent to E. J. Coleman four rent notes of the sum of $1,000.00 each, payable respectively October, 1915, October, 1916, October, 1917, and October, 1918, all payable to "M. C. Coleman, landlord or bearer," and all describing the locus in quo as the land thus rented (Record, p. 20), and E. J. Coleman received them and being armed with the same asserted to the tenant, Dan Davis, that

he E. J. Coleman was the owner of the land. Prior to the filing of the bill in this case, E. J. Coleman had collected the 1915 rents and upon being examined in the bankruptcy case claimed that he owned the land and the rents thereof, and would not yield either the land or the rents to the trustee for administration in bankruptcy. He had after the surrender and transfer of the rent notes to him, entered on the land to attend to certain repairs to be made thereon. (Record, p. 44, top 45).

It is important to note that the rent notes were all dated in 1913, and that there were originally five of these notes, and that M. C. Coleman collected the 1914 note and used the same as his own property. (Record, p. 29, line 15 et seq).

M. C. Coleman had held out the land as his to creditors (Record, p. 14, 15, 16, 17), who had become surety for his debts on the faith and representation by him that it was his land. Money was thus obtained from creditors for the avowed purpose of making improvements on the land. M. C. Coleman made a written statement as a basis for credit (Record, p. 49) in which he listed 650 acres of land owned by him, worth $30.00 per acre, and it was necessary to include the acreage of the locus in quo, to estimate that quantity of acres owned by him. The improvements placed by M. C. Coleman on the locus in quo consisted of numerous tenant houses (Record, p. 14, 22), and over five miles of wire fencing. He had cleared and cultivated the land so that in 1915 it was a ten horse farm. The land with the improvements were then worth considerable money. M. C. Coleman admitted that he was hopelessly insolvent ever since August, 1914, the commencement of the European War. (Record, p. 30, line 17).

M. C. Coleman when examined at his creditors meeting in bankruptcy, on oath testified in answer to the question, "Explain all about that land transaction with your father," as follows:

"I WAS JUST MARRIED AND STARTED HOUSEKEEPING AND MOVED ON THIS PLACE, AND THERE WAS SOME LAND OFF IN THE WOODS AND HE TOLD ME THAT IF I COULD TAKE IT IN I COULD HAVE IT. I WENT THERE AND CLEARED IT, CULTIVATED IT, FENCED IT AND CLEARED A TEN HORSE FARM AND I HAVE BEEN GETTING THE RENTS OUT OF IT, BUT I NEVER GOT NO DEED TO IT. BUILT EIGHT OR NINE TENANT HOUSES ON IT." (Record, pp. 31, 32).

When examined on the trial of this case, the testimony of M. C. Coleman shifted (Record p. 32), and he stated that after going upon the land under the above circumstances, thereafter his father told him he couldn't let him have the land and be fair with his other children. He thought this was said by the father a month or two after he had gone there. (Record, p. 32). The appellee, E. J. Coleman, testified that the conversation occurred shortly after the survey made in 1905, "I says, now I will sell it to you at the price land is going at and you can give me a note and if you never pay it, it will stand and bear interest and that will put you on an equality with my other children." (Record, p. 39).

E. J. Coleman makes out a case of a gift, and then a proposed change to advancement. (Record, p. 39).

The son did not accede to this proposition; on the contrary continued to use and improve the property and hold it out as his own, and was building a house for Dan Davis as late as the early part 1914. (Record, p. 23, line 10). The permanent improvements erected by the son were reasonably worth $6,000.00. (Record, p. 14).

While the merits of the cause are not in issue at this time, it is appropriate that the same be referred to incidentally as illustrating the jurisdictional question before the Court. The lower Court did not pass on the merits of

the case, and in deciding that no transfer was shown, he clearly shows that he was dealing with jurisdiction and not with the merits, otherwise he would not have dismissed without prejudice to action by the trustee in the State Court. (Record, bottom p. 55).

In Georgia voluntary conveyances by insolvents are fraudulent in law.

First National Bank vs. Bayless, 96 Ga., 685.

And the relationship of parent and child requires the transaction between them to be closely scanned, when it militates against the interest of creditors.

Hicks vs. Sharp, 89 Ga., 311;
Kelly vs. Simmons, 73 Ga., 716.

The immediate improvements of the locus in quo in 1902-1903 after entry thereon by M. C. Coleman sufficiently shows his acceptance of the gift.

Altgelt vs. Escalero, 110 S. W. Rep., 989.

The many declarations made by M. C. Coleman that the property was his; his borrowing money to improve it from creditors abundantly demonstrated by testimony of unimpeachable witnesses (although the respondent denied the allegation of the complainant to that effect on oath, see answer of respondent par. 9, record, p. 9); his written representation of the number of acres owned by him; his continuance of improvements as late as 1914; his renting out the land as owner; the inconsistency between the testimony of the son and that of the father as to the alleged second arrangement; the fact that the second arrangement was not

acted upon, because the son declined the father's proposal; all of these facts and circumstances indicate clearly that the land was the son's, that the title had vested in him by operation of the statute of Georgia; that he had a title to the same that was immune from attack by the father or anyone claiming through him. In this state of the record we find that the father by his own testimony, makes out of the proposition made (as he says) shortly after the survey of 1905, a case of proposing to treat the gift already consummated, as an advancement, which the son did not yield to. Whether gift or advancement in 1915 the land and its rights were M. C. Coleman's as much so as if he then held a deed to it from E. J. Coleman. He has by his action in 1915 stripped himself of this property with intent to defraud his creditors, as completely as if he had made a deed to it to his father; because what he has done has been to yield that most valuable of all rights appertaining to realty namely, the possession and fruits thereof, to one who could make some show of claim to title, because of the title held prior to 1902. In this manner he has put the trustee to his suit to regain that possession and the rents of the property. He has by acts done within four months prior to his bankruptcy transferred his property as effectually and as skilfully as any fraudulent device could be worked out to defeat creditors. Of course he did not make a deed to it, because that would have estopped E. J. Coleman from denying that in 1915 M. C. Coleman had the title. But he disposed of the possession of the land, and the property right he then had in the rent notes, and necessarily did an act amounting to a transfer within the definition of that term, which includes "EVERY MODE of disposing OR PARTING WITH property or the POSSESSION of property."

The bill was filed in the lower Court, September 20th, 1916, invoking jurisdiction under Sections 60 b, and 70 e, for the bankrupt had scheduled his father as a creditor, and it was not certain whether E. J. Coleman might claim that he received the rent notes as a creditor or not.

The Court below eliminated the case from Section 60 (b), and 70 (e), stating that the evidence showed the transaction as to the rent notes took place within the four months period.

The Court below considered all of the evidence, and in order to lighten the labors of this Court granted a certificate of jurisdiction, which will save this Court weighing the evidence, as to whether the land was given the son or not. Although of course this Court would have jurisdiction to determine even a contested issue of fact involving jurisdiction.

The Court below decided that what occurred between father and son in 1915, did not amount to any **transfer** within the bankruptcy act as would give the Federal Court jurisdiction; and that if land became the son's land it is still his.

The appeal was made directly to this Court, on the jurisdictional question alone.

III.

SPECIFICATION OF ERROR.

The errors assigned duly filed with the appeal complain of the final decree dismissing the bill for want of jurisdiction because the Court as a Court of the United States has jurisdiction to entertain the action under Sections 60 b, 67 e, and 70 e, of the Bankruptcy Act; because the Court has jurisdiction to grant the relief prayed for, and because the evidence of the complainant showed that such a transfer of property of the bankrupt was made by him in January or February, 1915, or at least within two months prior to May 8th, 1915 (the date of the filing of the bankruptcy proceedings), with intent to hinder delay and defraud his creditors;

all of which errors are more fully set forth in the assignment of errors (Record, pp. 59-61) complaining solely of the dismissal of the bill for want of jurisdiction, and all of which are relied on.

IV.

ARGUMENT.

In order to determine whether such a fraudulent **transfer** within the meaning of the Bankruptcy Act, took place, it is necessary that this Court should know the peculiarity of the law of Georgia relating to parol gifts of real estate.

Under Section 4151 of the Georgia Code of 1910, which has been the law of Georgia since the first Code of 1860, it is provided:

> "Presumption of gift. The exclusive possession by a child of lands belonging originally to the father, without payment of rent for the space of seven years, shall create conclusive presumption of a gift, **and convey title to the child,** unless there is evidence of a loan, or of a claim of dominion by the father acknowledged by the child, or of a disclaimer, on the part of the child."

Actual possession is unnecessary, possession by a tenant is sufficient.

Daniel vs. Frost, 62 Ga., 703.

There has been no construction of this code section by the Georgia courts, as to whether a disclaimer orally made by the child after the seven years exclusive possession, etc., would operate to transfer his rights inter sese—but on familiar principles the son could estop himself by such conduct from afterwards claiming title.

At an early date in Georgia, when there was no statute of prescription relating to realty, but only a statute of limitations by which the right of action for land would in time be barred, it was held that one in adverse possession could after the rights of the true owner had become barred, orally abandon his right of possession to the true owner, and apparently by this verbal act, yield up his rights in the land.

Cook vs. Long, 27 Ga., 280:
Russell vs. Slaton, 25 Ga., 193.

Which were cases of abandonment of the possession of the land.

But, since our statute which permits an occupant of land generally under certain circumstances to acquire a prescriptive title, it has been held that mere **abandonment** after title has vested will not pass title to the holder of the paper title.

Tarver vs. Deppen, 132 Ga., 802.

It may well be, that as between father and son, where the rights of third persons are not involved, the son might after the seven years exclusive possession, verbally disclaim his title and the rents to accrue, to his father, and thereby revest the father with title, but not to the injury or prejudice of the son's creditors.

Certainly that is exactly what was sought to be done in the case at bar, but we claim that rights of others were involved, and that this could not be accomplished either by written or verbal acts, as against the rights of creditors and the trustee in bankruptcy of M. C. Coleman.

The following Georgia decisions illustrate and apply the law of conclusive presumptive gifts of land by parents to children.

Lemon vs. Wright, 31 Ga., 324, where an attempt was made to revoke the gift of a slave to defeat creditors.

Gill vs. Strozier, 32 Ga., 688, where the presumption under the facts were deemed conclusive.

Mims vs. Lockett, 33 Ga., 9, where the seven years did not expire, but the donee made permanent and valuable improvements and the father could not resist a bill for specific performance, on the contention that the rents had more than compensated the donee for all improvements and expenses.

McKee vs. McKee, 48 Ga., 334, the Court said the whole idea of the law is based upon the conduct of the father that he has for seven years allowed the son to keep his land, without paying rent, and has claimed for all that time no dominion over it."

Daniel vs. Frost, 62 Ga., 703, where the Court said that

> "the mere retention of the formal title is not uncommon. When parents give land to their children they frequently take their own time to convey, sometimes by deed, sometimes by will and in here and there an instance, delaying until death surprises them and it is too late to convey at all."

And the Court in the same case, further proceeded to show,

> "the law takes note of the acquisitive principle of human nature which impels men ordinarily to accept whatever bounty is offered them. A creditor is not over rash in shaping his own action by a presumption which the law itself indulges in."

In Poullain vs. Poullain, 72 Ga., 412 (5), where it was held that the presumptive gift could be proven by direct or circumstantial evidence.

Johnson vs. Griffin, 80 Ga., 551, which holds that the presumption arises, "even though it is certain that the father retained the paper title, and though that fact be admitted by the son." "The assertion of dominion by the father contemplated, is over the **property** not the paper title."

"The son's acknowledgment that the paper title is in the father will not prevent the statute from taking hold and completing the gift." And the title acquired by the son under the statute, is a statutory title.

But, aside from the Code Section 4151, in Georgia the doctrine of equitable titles obtains. One who goes into possession of land and pays the purchase money, acquires a complete equity, on which he may maintain ejectment against any disseizor.

McCandless vs. Inland Acid Co., 115 Ga., 968 (2).

And where a child goes into possession of land on the faith of an oral gift from the parent and erects permanent improvements, the child is vested with a perfect equity, even though seven years have not expired.

Causey vs. Causey, 106 Ga., 193, 194.

And the title acquired by the child, even prior to the seven years, is superior to that of a subsequent deed made for value by the parent.

Dunn vs. Bray, 88 S. E. Rep. (Ga.), 931.

The Statute of 13th Eliz. Ch. 5, and the Bankruptcy Act of 1898 as amended, Sec. 1, Sub. Sec. 25, Sec. 67 e, and 70 e.

The question of jurisdiction arises as to whether anything was **transferred** by the debtor bankrupt to E. J. Coleman, within the intent and meaning of the bankruptcy act. A consideration of this question naturally involves the question of fraudulent transfers therein denounced, and the subject generally of conveyances made to defraud creditors.

The Statute of Elizabeth, relating to fraudulent conveyances, mentions "feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or any of them, or of any lease, rent, common or other profit or charge out of the same lands, tenements, hereditaments, goods and chattels, or any of them BY WRITING OR OTHERWISE." Made to the end, purpose and intent, to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts," etc., which were declared utterly void, frustrate and of none effect."

This statute, which was merely declaratory of the common law has always been liberally construed to the end that fraud may be detected and its design overthrown by justice.

It will be noted that the statute mentions "by writing or otherwise." The Georgia Code of 1910, Sec. 3224, provides,

> "Every conveyance of real or personal estate, BY WRITING OR OTHERWISE, and every bond, suit, judgment and execution or contract of any description had or made with intention to delay or defraud creditors and such intention is known to the party taking," is void.

Many States of the United States have adopted the language, "By writing or otherwise" in their statutes against fraudulent conveyances, namely, Georgia, Alabama, Colorado, Indiana, Michigan, Nebraska, Rhode Island, and perhaps others.

The lower Court in the case at bar, thought that only derivative titles were included under 67 e, of the Bankruptcy Act, and as M. C. Coleman did not make a deed to the land to E. J. Coleman in 1915, the Court was of the opinion that it had no jurisdiction to grant any relief to the trustee. But this view of the law is narrow and restricted and as we hope to show is at variance with the broad meaning given to the words of the act by definition contained in the act, and by cognate cases.

While few cases may be instanced, where the failing debtor and his fraudulent conspirator have risked the transaction on the somewhat insecure foundation of oral negotiations relating to land, we have found several cases where courts have frustrated the purpose of the parties, under the statutes against fraudulent conveyances.

In Waites vs. Davis, 158 Fed. R. 677, affirmed in 164 Fed. 397. It appeared that a corporation by entry had acquired the right to obtain a patent, provided it continued the improvement of the land and complied with the law. One of its stockholders, in order to defeat the judgment lien of a creditor of the corporation, permitted the corporation to forfeit its right of patent by non action, and have a third person enter and continue the improvements and thereby acquire the patent. This third person filed a bill to have the lien cancelled, and the Court held the arrangement was in effect a fraudulent conveyance.

> "The law and the statute prohibit every disposition of property which is designed and intended to hinder, delay or defraud creditors. It is immaterial by what

instrument, proceedings or means the alienation or transfer may be accomplished. A Court of equity will cut its way through the process by which a debtor's property was transferred no matter how novel and unprecedented the arrangement may be and lay its hands upon the fraudulent purpose which was designed to be accomplished, if such purpose appears and declare the transaction fraudulent."

158 Fed. R. 677.

"An agreement by one entitled to a conveyance, that the grantor shall remain in possession and shall not convey, in order to cover the land from the grantee's creditors, amounts to a conveyance to defraud under 2 Rev. St. 154."

Pennington vs. Clifton, 11 Ind., 162.

"Any sale, contract or arrangement, if entered into with the intent to hinder, delay or defraud creditors is void as to them."

Chandler vs. Von Roeder, 24 How (U. S.) 224.

"It is the motive of the giver, not the knowledge of the acceptor that is to weight. The Statute (of Elizabeth) extends to ALL CASES. * * * The transaction smells of craft and experiment, to give them in part their legacies which they would not have had if he had paid them in part of their legacies; for then they must have refunded.

Partridge vs. Gopp, Ambler, 596.

The Bankruptcy Act, sec. 1, subsection 25, defines transfer, which shall "include EVERY MODE OF DISPOSING OF OR PARTING WITH PROPERTY OR THE POSSESSION OF PROPERTY, absolutely or conditionally, as a payment, pledge, mortgage, gift or security."

The Bankruptcy Act itself does not declare that only derivative titles shall be vulnerable to attack for fraud. The language used in the above definition has been several times referred to by this Court.

"All technicality and narrowness of meaning is precluded. The word is used in its most comprehensive sense, and is intended to include every means and manner by which property can pass from the ownership and possession of another and by which the results forbidden by the statute may be accomplished * * *."

> Carson, Pirie, et al vs. Chicago, etc., Co., 182 U. S. 438.

"the words, 'as payment, pledge, mortgage, gift or security,' as used in the definition are illustrative merely, and do not so qualify the meaning of the term so as to permit a transfer by any other method."

> Collier on Bankruptcy (ninth Ed.), p. 14;
> In re Stege, 116 Fed. R., 342.

Section 67 e, of the Bankruptcy Act as first passed in 1898, construed in connection with section 23 b, as then formulated, gave no jurisdiction to the Federal Courts in actions by the trustee against adverse claimants, unless the defendant consented.

Section 23 b was amended in 1903 so as to include actions under 67 e and 70 e, and section 67 e was also amended at the same time, but section 70 e remained as originally enacted.

The amendment of 1910, added to section 70 e, to vest jurisdiction in the Federal Courts under that section without the defendants consent.

A glance at the following decisions will show the application of the original act, and the amendments thereto.

Bardes vs. Bank of Hawarden, 178 U. S. 524;
Wood vs. Wilbert's Sons Shingle Co., 226 U. S. 384;
Harris, Trustee vs. First National Bank, 216 U. S, 382.

In reference to the first case, its application to the question has been set aside by subsequent amendments to the act.

The second case arose prior to the amendment of 1910, which vests jurisdiction in the District Court of actions by the trustee under Sec. 70 e.

The third case arose before the amendment of 1910, but the Court assumed for argument purposes that even if 70 e authorized the trustee to sue in the Federal Court without the defendant's consent, that the facts involved showed no transfer by the bankrupt, for he had pledged securities to a bank for a loan, and had afterwards repaid the loan, and the bank refused to surrender the collateral. This was held to be a withholding of property but not a transfer by the bankrupt.

No case that we know of, decided by this Court has construed section 67 e, or 70 e, to mean that the word "transfer" shall include derivative titles only. And we wish to show that Congress could not have intended this restrictive meaning to apply.

The citation of authorities by the Judge of the lower Court (Record, p. 55) do not at all sustain the position taken by him. In Newcomb vs. Bivins, 199 Fed., 529, the title and possession of the land never had been in the bankrupt.

At the outset, in 1898, the Bankruptcy Act was deficient in giving to the trustee an effective forum to set aside fraudulent conveyances or preferential conveyances or transfers. It was soon found that delays to creditors and interminable litigation would result in working out the rights of creditors through the various State courts.

For that reason the act was amended in 1903, and again in 1910 so as to vest jurisdiction in the Federal Court without the defendant's consent to recover voidable preferences under 60 (b) and fraudulent transfers under section 67 e and 70 e. The history of the amendments show that Congress intended that the act would subserve the best interests of all parties to vest jurisdiction thereunder in the Federal Court, without the defendant's consent. We certainly cannot assume that the amendments were made for the benefit of the fraudulent grantees, or transferees.

THE TRANSACTION in 1915, and the transfer of the rent notes and the fraudulent disclaimer of interest in the locus in quo.

If M. C. Coleman had held the rent notes, which themselves were equivalent to a lease of the premises for 5 years, and continued his possession of the locus until after May 8th, 1915, the date when he was adjudged bankrupt, the Federal Court would have brought within its jurisdiction the property, and would have had the power to determine the ownership of it. And this could have been accomplished on summary notice to E. J. Coleman.

Dayton, Trustee vs. Stanard, 241 U. S. 588;
Murphy vs. John Hoffman Co., 211 U. S., 562;
White vs. Schloerb, 178 U. S., 542;
Whitney vs. Wenman, 198 U. S., 539;
Coder vs. Arts, 213 U. S., 223;
Acme Harvester Co. vs. Beekman Lumber Co., 222 U. S. 301;
Clay vs. Waters, 178 Fed. R., 393.

But this was what M. C. Coleman wished to avoid, and in order to accomplish his purpose, he sent the rent notes to E. J. Coleman, and in view of the fact that E. J. Coleman by virtue of his previous title to the locus in quo prior to 1902, could very easily set up the claim that this paper title held by him prior to 1902 had never vested in M. C. Coleman, but that he, E. J. Coleman, always had been the owner of the locus in quo, and to accomplish the design of the two, M. C. Coleman fraudulently disclaimed any interest or ownership in the land and in the rents of the land, and E. J. Coleman assumed control over the possession of the property, collected the rents of the same, and directed certain repairs to be made on the premises, and the tenant of the son attorned to the father.

And while summary proceedings are available to the trustee as to property in custodia legis, yet plenary proceedings are available to him in the Federal Court as to such property.

Whitney vs. Wenman, 198 U. S., 539.

If an arrangement of this kind can not be set aside in the Federal Court, designing persons will seldom resort to formal transfers of title to effect their fraud; on the contrary there are many instances where the fraud could easily be conceived and carried into some effect by verbal acts, and change of possession of realty, in Georgia, and other States, with immunity from suit in the Federal Courts and where the advantage of local influence would greatly benefit them.

We will illustrate those cases later. For the present we wish to show the Court that what took place in 1915 amounted to a disseizin of M. C. Coleman by E. J. Coleman with the consent of M. C. Coleman as to the locus in quo, and that it happened by virtue of the transfer of the rent notes, the assumption of ownership by the transferee, E. J.

Coleman, the taking possession of the land and having the tenant attorn to him, and making the repairs, and the hostile claim set up by E. J. Coleman to the land, as against the trustee in bankruptcy.

The status of this land prior to the transfer.

Possession in M. C. Coleman from 1902 until 1915, and permanent improvements of large value; continuous exercise of ownership by him, and appropriation of rents for his own purposes; holding out of property by him to his creditors as an asset; renting the land to Dan Davis in 1913 as a landlord of the property and use of the rents collected from Davis in October, 1914. No exercise of dominion over the property by E. J. Coleman since prior to 1902; no payment of rent to E. J. Coleman, and no waiver or disclaimer of any rights by M. C. Coleman to E. J. Coleman.

Ownership and claim by M. C. Coleman of $4,000.00 rent notes being the rents of this realty which he claimed as his own.

The status of this land after the transfer in 1915.

E. J. Coleman in possession of $4,000.00 of rent notes formerly belonging to M. C. Coleman. The collection of the rent for 1915 by E. J. Coleman who collected it under the claim of and assertion of ownership of the title to the land; the collection of the 1916 rent, also the 1917 rent, and the intent to collect the 1918 rent (which will have become due prior to this argument). The disclaiming by M. C. Coleman of any interest or right in the land or in the rents thereof. The intention of M. C. Coleman that E. J. Coleman shall have the possession of the land and append the same to the title which E. J. Coleman had to this land acquired prior to 1902. E. J. Coleman admits that M. C. Coleman "gave it up to me" Record, page 44.

The title to this land vested in the son certainly after the expiration of seven years from the time he entered, and as he entered about 1902, in 1909 his title vested. This was a legal title under the Georgia statute.

While some claim is made that the father, E. J. Coleman, exercised dominion over the land, there is no evidence of any ACT of such dominion. In response to the question: "Will you please tell the Court what act of dominion you exercised over this land in dispute during those twelve years?" E. J. Coleman answered: "I didn't have but mighty little money and give it to the boy, if he could make a living on it, to do it."—Record, p. 41, lines 22-25.

The effort made by the son to indicate that he acknowledged title in the father as to the railroad right of way is abortive, for that did not happen until 1911 (testimony of J. H. Rowland, Record, p. 51), and no deed was made for the right of way, and there was no assertion of dominion over the title, nor was there any disclaimer by the son at that time of the title.

That the son intended by his conduct and acts in 1915 to yield up the possession and title to the land to E. J. Coleman, we call the Court's attention to the following: Testimony of E. J. Coleman, p. 44:

"Q. When were you there in those two houses?"

"A. SINCE HE GIVE IT UP TO ME I was in one of them, and ate dinner in the other house the day that we surveyed that piece of land that Gillis brought up to you."

And E. J. Coleman, since the transaction in 1915 complained of, entered in the land, claiming ownership, for he said on page 44, 45 of the Record:

"A. And since he gave it up to me, I went with Dan Davis to look at its condition. * * * I went over to the house with him from where I was building another house near the place, and went into the house, and looked at it."

And the son, M. C. Coleman, fully recognized that his act in 1915 was in effect an effort to **give** the land back to his father, for on page 37 of the Record, the son testified as follows:

"Q. And when these creditors got to entering suits in the courts then for the first time in 12 years you GAVE IT TO YOUR FATHER? ISN'T THAT SO?"

"A. Well, I guess it is."

M. C. Coleman fixes the date when he surrendered the notes and his rights to the land to E. J. Coleman as follows:

"I know that I saw him not two months before I went into bankruptcy, possibly a month afterwards, I think I mailed him the notes."—Record, p. 33.

Although the father, E. J. Coleman, testified: "He sent these notes to me by a boy, and I never had any conversation with him at all."—Record, p. 44, line 18.

The Ninth paragraph of the bill of complaint distinctly charged that E. J. Coleman was withholding from the trustee the land and the improvements and rent notes.—Also set forth the value of the permanent improvements made by M. C. Coleman.

The defendant, on oath, filed answer, and in the ninth paragraph of his answer (Record, p. 9) denied the allegations of the ninth paragraph of the complaint, and set up that the improvements made by M. C. Coleman were made at scarcely no cost to M. C. Coleman, but from the product of the land, together with what was advanced to the said M. C. Coleman by defendant.

The contention thus made by E. J. Coleman is entirely refuted by the many reliable witnesses for the complainant, and there is no evidence of M. C. Coleman or E. J. Coleman to support the contentions made by E. J. Coleman. The defendant in the sixth paragraph of his answer virtually admits that in accepting the rent notes from M. C. Coleman he "ratified the said trade, which he knew he need not do unless he wished."

We also call attention to a statement in the opinion of the Court which is not borne out by any evidence.

The judge said: "This 50-acre tract went into the possession of the trustee and there is no contest over its ownership."—Record, p. 55.

This 50-acre tract, owned by M. C. Coleman, was included in the land rented by M. C. Coleman to Dan Davis. The rent notes covered the aggregate land, the locus in quo, plus this 50-acre tract. When the bankruptcy petition was filed by M. C. Coleman, Dan Davis, the tenant of M. C. Coleman, was in possession under this rental contract of the locus in quo and the 50-acre tract. The trustee in bankruptcy never did take possession of this 50-acre tract. The transfer made by the bankrupt to E. J. Coleman of the rent notes, as effectually transferred the rents of this 50-acre tract, as it did the rents of the locus in quo. The Judge was therefore in error in stating that the trustee took possession of the 50-acre tract. The trustee sold the 50-acre tract to E. J. Coleman, and E. J. Coleman, under the opinion of the judge, was liable for the rents of the 50-acre tract accruing during the year that the same was sold by the trustee.

We may ask, if the Court deemed the transfer of the rent notes, as to this 50-acre tract void, and deemed that the Court had jurisdiction to require E. J. Coleman to pay the pro rata rents of the 50-acre tract, why did not jurisdiction of the Court exist to set aside the transfer of the rents of

the locus in quo, as both rents were transferred by the very act, uno ictu, in delivering the rent notes to E. J. Coleman in 1915?

Bearing in mind that the son took possession of the locus in quo in 1902, and the survey was made in August, 1905, and the father, E. J. Coleman, claims that shortly thereafter the alleged second arrangement was made which M. C. Coleman did not assent to (Record, p. 39, Record, p. 37), the son undertakes to explain that the reason why he bought another place was because he did not wish to accede to the proposition of E. J. Coleman (Record, p. 37), where he says: "I would not do it. I went and bought another place." Yet, he did not buy this other place until 1913 (Par. 6th of Bill, Record, p. 2, admitted in paragraph 6 of answer, Record, p. 8). And in 1914, M. C. Coleman was continuing to improve the locus in quo, by building a tenant house thereon for Dan Davis (Record, p. 23, line 10), rented the locus in quo as his own property in 1913 (Record, p. 20, testimony of Dan Davis), made a written statement for credit January 15th, 1914, in which he stated he owned 650 acres; and made frequent representations that the land was his after 1913, and the Court will readily grasp the situation that the bankrupt is not telling the truth in reference to his true relation to the land in question. The Court will also notice this significant fact, that in the taking of the testimony in the case, on May 11th, 1917, (Record, p. 12), M. C. Coleman and F. C. Gillis testified on that day. The former said the second arrangement was made shortly after the first, possibly a month or two (Record, p. 32, Record, p. 37), most of the other witnesses for complainant testified on May 11th, and the hearing was adjourned until May 12th, 1917, owing to physical condition of E. J. Coleman (Record, p. 38). And E. J. Coleman testified on that date that the second arrangement was made "about the first time I reckon, that he was back at my place, after surveying it." (Record, p. 39). Which would mean shortly after August, 1905.

E. J. Coleman saw that his son, M. C. Coleman, placed him in a serious dilemma by stating that the second arrangement was shortly after the first, or shortly after 1902, because he then could not explain why he surveyed the land for his son in 1905, which would necessarily mean that a third arrangement had been made. Hence it is, that we find his version of the date of the second arrangement is after the survey.

In proceedings to recover real property, in Georgia, what is known as the "consent rule" is always considered filed, which means that lease, entry and ouster are admitted by the defendant or claimant. Code 1910 of Georgia, Section 5585.

And Section 6282 of the Georgia Code, 1910, provides:

"No party shall be admitted to defend an ejectment cause, or an action of complaint for land, who does not admit that he was in possession of the premises in dispute at the commencement of the action."

If M. C. Coleman had retained the notes and the possession of this property until after May 8th, 1915, the date of his bankruptcy, the trustee would have obtained possession of the notes, and the possession of the property, and would have been entitled to hold and administer the same, and the court of bankruptcy would have decided any claim to the title. But in attempt to avoid this jurisdiction, and to disturb any rights that might vest in the trustee, the rent notes were transferred by M. C. Coleman, and oral disclaimer of title made, and E. J. Coleman stepped in and asserted his rights in the rents and in the land.

A result, therefore, has been accomplished by acts and intent, which for all practical purposes are equivalent to a conveyance by deed of a title to the locus in quo shortly before

bankruptcy, for not only has the bankrupt and his trustee lost the possession of the property, but also the evidence of indebtedness representing the rents thereof, all of which have been **transferred** to E. J. Coleman.

The action of ejectment in Georgia involves the possessory title.

Cumming vs. Butler, 6 Ga. 88.

And the title necessary to support the action is such that would legally authorize him to recover possession of the land.

Parker vs. Brown, 39 Ga. 50.
Blackmon vs. Burt, 99 Ga. 118.

The accepted meaning of "transfer," aside from the bankruptcy act is "the act by which the owner of a thing delivers it to another with the intent of passing the rights which he has in it to the latter."

Bouvier Law Dictionary, p. 1133.

And in Georgia, it "covers any act by which the owner of anything delivers it to another with the intent to pass his rights therein."

Hendrick vs. Daniel, 119 Ga. 361.

And where adverse possession to realty is set up, all idea of right is excluded and the only question is quo animo, the possession was taken.

Smith vs. Burtis, 9 Johns. 180.
Innerarity vs. heirs of Mims, 1 Ala. 669.

"Rights of ownership are substantially the same as those incident to possession. * * * The owner is allowed to exclude all, the possessor is allowed to exclude all but one and is accountable to no one but him."

Holmes Common Law Lect. 6.

And possession of real estate is presumed to accompany ownership until the contrary is proved.

Fletcher vs. Fuller, 120 U. S., 534.

And actual occupation without apparent right is the lowest degree of title. This happens when one disseizes another.

2 Black. Com. 195.

And disseizin in Georgia results from "the fact of possession and the quo animo it was commenced and continued," "where one enters intending to usurp the possession and to oust another of his freehold."

Moody vs. Fleming, 4 Ga. 120.
1 Inst. 153.

And mere possession of land in Georgia is the lowest and most imperfect degree of title. The court indicates that title to land can be evidenced by possession.

Peck vs. Land, 2 Ga. 7-8.

M. C. Coleman in 1915 had the title to this land as completely as if it had been deeded to him. The statute expressly provides that the possession under the circumstances **conveys** title. His trustee in bankruptcy would have collected the rents and administered the realty without the molestation of E. J. Coleman. The bankruptcy court would have had jurisdiction to administer this asset, by virtue of the possession and ownership of M. C. Coleman.

THIS HAS BEEN DENIED THE BANKRUPTCY COURT, BY THE ACTS AND CONDUCT OF THE RESPONDENT AND THE BANKRUPT, as the lower court says, within four months prior to the bankruptcy of M. C. Coleman. (Record, p. 54.) HOW HAS IT BEEN ACCOMPLISHED?

By the son, M. C. Coleman, transferring the rents of the land to E. J. Coleman, by E. J. Coleman taking the right of possession of the land, and asserting his ownership of the land, by his entering into the possession of the land, and by his having the tenant attorn to him and paying him the rents as owner, and by his resisting the Trustee's right to the possession. The payment of rent by the tenant Gillis to E. J. Coleman, the latter asserting his ownership of the land is an attornment, and the possession of Gillis is now the possession of E. J. Coleman.

Knorr vs. Raymond, 73 Ga. 749 (3).
24 Cyc. 891 (c).

But the lower court says, that if the title was in M. C. Coleman in 1915 just prior to these acts, it is still in him. (Record, p. 55.) This is the argument of counsel for E. J. Coleman; of course the title is still in him, and it would be still in him, if he had conveyed by formal deed the land to E. J. Coleman, for the bankruptcy act declares that such conveyance is void, and so does the Georgia statute.

But, our answer to the argument is, that if the title is still in M. C. Coleman, he has by his acts interposed a serious obstacle to getting the benefit and enjoyment of that title. For E. J. Coleman has disseized the bankrupt and his trustees, by his acts and conduct, with the connivance of M. C. Coleman, and has seized upon the rents of the land and has collected $3,000.00 of the rents, and before this case is argued will have collected the full $4,000.00 rents of the land.

The lower Court says that the rents follow the title. If this be true and the title is still in M. C. Coleman, the rents are not following the title, because of the invalid transfer and we have asked the Court to order the payment of such rents to the trustee by E. J. Coleman, and the possession of the property recovered.

The lower Court, however, says that it has no jurisdiction because nothing has been transferred by the bankrupt, and that our remedy is only in the State Court. (Record, p. 55.)

May we inquire what would be the remedy in the State Courts, if they were resorted to? It would be an action of equitable ejectment. This would become necessary because E. J. Coleman has with M. C. Coleman's consent, ousted the latter of his freehold. The act quo animo constitutes the ouster. If he has ousted the bankrupt of his freehold, why do not the acts that render this State Court proceeding necessary, amount to such a transfer as will confer jurisdiction on the Federal Court to accomplish the same result?

Where one acquired title to land by adverse possession, a court of equity will enjoin the defendant from asserting title to the same premises from former ownership that has been lost, and complete the means by which the right, estate or interest of holders of real property may be proved and **to remove obstacles to its enjoyment.**

Sharon vs. Tucker, 144 U. S. 533.

In the above case, it is true that the owners of the prescriptive title had not been ousted by the holders of the paper title. In the case at bar the bankrupt abandoned the possession to his father.

And because M. C. Coleman has transferred the rents, and thereby transferred the possession to E. J. Coleman, who has taken possession of the locus in quo, and asserted title thereto,

a court of bankruptcy can determine the trustee's right to the premises. "And where the title is purely legal, for such and similar causes to those we have enumerated, equity has carved out a branch of jurisdiction and a class of bills termed in the books ejectment bills, in which not only the title is made clear, but the POSSESSION DECREED ALSO."

Sharon vs. Tucker, 144 U. S., p. 545.

The aid of a court of justice becomes necessary to restore the status of 1915. Even where a title by adverse possession had ripened into a fee, and the holder abandons the same to the holder of the paper title, yet it requires the aid of the law to restore the former possession.

Inhabitants of School District vs. Benson, 31 Maine, 381.

And a verbal gift of land, the donee entering, creates at least a tenancy at will which is **an estate in land.**

Co. Litt. 55-a, 2 Black Com., 145.
Jackson vs. Rogers, 1 John Cas. 33.

By the ACTS and conduct of the parties "POSSESSION" has changed, and a disposition of the possession of property is a transfer within the bankruptcy act.

Abandonment by an adverse holder may bring about an estoppel which will defeat the holder's rights.

Tarver vs. Deppen, 132 Ga. 804.

Certainly no court would aid M. C. Coleman to regain possession from E. J. Coleman. In pari delicto potior est conditio possidentis.

Bolt vs. Rogers, 3 Paige 154, 157.
Dent vs. Ferguson, 132 U. S. 66.

"Any conduct which estops one in pais to assert title or right of possession to land is a good defense to ejectment."

15 Cyc. 76.

"It would seem too late to contend that the title to real estate can not be passed by matter in pais, without disregarding the statute of frauds."

Kirk vs. Hamilton, 102 U. S. 77.

And in Georgia, payment of taxes by one in adverse possession of land is not a condition to his acquiring the fee.

The payment of taxes by E. J. Coleman is doubtful. It can not be established except by his oral statement. (Record, p. 41, line 7th from bottom). His tax returns were general. There is no method of determining whether he included all his property or not. (Record, p. 41). And payment of taxes by the parent is entirely consistent with a gift or advancement of realty.

Tuggle vs. Tuggle, 57 Ga., 520.

No question whatever is raised as to whether an adequate and complete remedy at law in the Federal Court existed. That question is not jurisdictional, and would seem foreclosed entirely by the following authorities:

Equity Rule of this Court, No. 22;
Act of Congress March 3, 1915 (38 Stat. at L. 956);
Friederichsen vs. Renard, decided May 20th, 1918;
Collins vs. Bradley, 227 Fed. R., 199.

A plain, adequate and complete remedy does not exist at law, for the trustee. For if ejectment were maintained, and the possession restored to the trustee, we would still find the paper recorded title in E. J. Coleman prior to 1902. This

would always interfere with a ready sale of the land, and would rest as a cloud on the trustee's title. This circumstance, coupled with the fraud of the bankrupt and the respondent, are ample grounds for supporting the jurisdiction of equity to grant relief. We would have to maintain an action in the State Court in equity, for complete relief, and the State and Federal Courts have concurrent jurisdiction, to set aside this transfer and recover the possession of the property, and grant FULL and COMPLETE relief.

The following authorities sustain our contention:

Jordan vs. Faircloth, 27 Ga., 372, 377;
Ruckman vs. Cory, 129 U. S., 387;
Stewart vs. Masterson, 131 U. S., 151.

The cause of action is based upon fraud. Equity has always been peculiarly conversant with that subject, and granting relief therefrom. The right of the complainant to have the rent notes (uncollected at time the bill was filed) impounded and ordered surrendered is in itself a ground for interposition of equitable relief. Choses in action in the hands of a voluntary assignee will be subjected by equity to the payment of the debts of the grantor.

Wright vs. Petrie, 1 Smed & M., 282.

Equity can and will require restitution to be made in cases of fraudulent conduct of the respondent.

The cause of action of the complainant in this case, is the wrong done; that wrong consists of the bankrupt, M. C. Coleman fraudulently yielding up to E. J. Coleman the possession of the land, fraudulently transferring $4,000.00 rents of the land, fraudulently asserting that he had no rights in the land, fraudulently putting it out of the power of the Federal Court to draw to itself jurisdiction over this land, on the filing of bankruptcy proceedings by virtue of bank-

rupt's possession. And moreover, the fraudulent assertion and exercise of ownership and dominion over the land and its rents, by E. J. Coleman in 1915, at a time when M. C. Coleman was the legal owner of the land and the rents thereof.

The usual relief granted by a court of equity where a fraudulent transfer has been made, is to require the respondent to do all things needful and necessary to restore the property and its full and complete enjoyment to the complainant and otherwise abide by the lawful orders of the Court.

The lower Court decided that there is nothing to "cancel." It is true that the evidence does not disclose any written instrument whereby formal conveyance of the paper title of land was attempted to be conveyed by the son to the father. But there is relief which a court of equity may grant, and which it was requested to grant, and which is germane to the main prayers of the bill, namely, the recovery of the possession of the property from E. J. Coleman, setting aside the transfer of the rent notes and recovering the same from him the amounts which had been collected, and impounding those rent notes which had not been collected when the bill was filed. And having jurisdiction to grant full and complete relief, to require the respondent to place the formal paper title in the complainant, and enjoin the respondent from setting up or asserting any hostile claim against the premises and its rents forever.

THE IMPORTANCE OF THE QUESTION INVOLVED

The Court below was of the opinion that the act of transferring the four thousand dollars of rent notes made by M. C. Coleman to E. J. Coleman within two months of the filing of bankruptcy proceedings, the assumption of control and possession of the locus in quo by the respondent thereunder, and the attornment by the tenant Dan Davis to E. J. Coleman by

virtue thereof, and the subsequent improvements made on the locus in quo by E. J. Coleman, and the disclaimer of ownership fraudulently made by M. C. Coleman did not constitute a "TRANSFER" within the meaning of section 67 e of the laws of Congress relating to bankruptcy so as to confer jurisdiction. The lower Court being of the opinion that the word **transfer** as therein used means, as applied to real estate, a derivative title.

The Court assumes for the sake of the jurisdictional question that the acts of E. J. Coleman, and the permanent improvements and long possession acquiesced in by the parent E. J. Coleman, placed title to the locus in quo in M. C. Coleman, and that it is still his property and being his property, and rents of the same being his, that the acts proven, did not by themselves constitute a transfer, within section 67 e, assuming that the fraud as laid was also proven.

We submit that this position is untenable, not only by the definition of the word TRANSFER, contained in section 1 of the bankruptcy act, and the cognate decisions on questions of fraudulent conveyances to defeat the payment of debts, but is in itself one that seems to us to beg the question at issue. For if the title of the land be in the son, and the rents follow the title, the son M. C. Coleman has transferred the rents thereof. And if the title be in the son, and the rents thereof have been fraudulently transferred within four months prior to the filing of the bankruptcy proceedings, and the possession of the property delivered to E. J. Coleman, the United States District Court has jurisdiction to recover the rents, and as the transferee of the rents has assumed possession of the locus in quo, it has jurisdiction and power to require restoration of the possession, and place the trustee in statu quo, and require the respondent to do such other things that may be needful or necessary to place the paper title in the son, for the purpose of administration in bankruptcy.

We submit, that in those States where implied trusts of real estate exist, where one pays the purchase money, and the paper title is taken in another, the bankruptcy act, its purpose, intent and spirit can be set at nought by designing persons, by evading the jurisdiction of the Federal Court, by transferring possession of realty to the fraudulent transferee, disclaming ownership, and asserting the position that the property has always been the transferee's as he paid the purchase price. This has too often been resorted to in Georgia to defeat creditors and they have been able to defeat creditors, because of the fact that it is difficult to disprove the contentions, and the local influence of the parties have weight with juries, which in all equity causes in Georgia try contested issues of facts.

The following authorities will illustrate to what extent the jurisdiction of the Federal Courts in bankruptcy may be nullified by fraudulent debtors and those colluding with them, thereby defeating the intention of Congress.

Georgia Code 1910, Sec. 3739, provides: "IMPLIED TRUSTS." Trusts are implied—

1. Whenever the legal title is in one person but the beneficial interest either from the payment of the purchase money, or other circumstances, is either wholly or partially in another.

The following cases show how such trusts may arise in Georgia:

"Husband purchasing land with wife's money, trust results in favor of latter."

Sasser vs. Sasser, 73 Ga., 275;
Brooks vs. Fowler, 82 Ga., 329;
Burt vs. Kuhnen, 113 Ga., 1143;
Bell vs. Stewart, 98 Ga., 669.

2. Where from any fraud, one person obtains the title to property which rightfully belongs to another.

3. Where from the nature of the transaction it is manifest that it was the intention of the parties that the person taking the legal title shall have no beneficial interest.

Section 3741 of the same Code, provides:—PAROL EVIDENCE. In all cases where a trust is sought to be implied the Court may hear parol evidence of the nature of the transaction or the circumstances or conduct of the parties either to imply or rebut a trust."

Hence it is, that a debtor in failing circumstances, to defraud his creditors, while enjoying the possession of land which he in fact owns, either by personally being in possession, or by his tenant, may deliver over this possession of the land to his relative, file bankruptcy proceedings, and claim that the relative, in equity, owns the land because the relative paid the purchase money, the debtor having taken the title in his own name through error. And if a tenant of the debtor should happen to be in possession of the land, the debtor may accomplish the same result by turning over the rent notes to his relative, fraudulently disclaim any rights because of the above facts, and force the trustee to litigate with the relative in the State Court, because no formal deed was executed to the relative.

Or, we may instance a case where the debtor having a perfect equity, by reason of the payment of the purchase money, may collude with the vendor to restore the possession to the vendor, in order that the latter may set up the paper title previously vesting the legal title in him, and then file bankruptcy proceedings, and force the trustee to litigate in the State Court, because no formal deed was executed.

A perfect equity in Georgia is the equivalent of a legal title.

Smith vs. Smith, 133 Ga. 173.

We can not believe that such iniquitious results can be accomplished under a proper construction of the bankruptcy law.

Certainly Congress did not amend the Act in 1910 to confer jurisdiction under Section 70-e, on the Federal Courts, with the intention of conferring any benefit on the bankrupt or his fraudulent transferee. And while we have no doubt that our State Courts will administer justice, yet in Georgia, none of its Appellate Courts can review issues of fact in any cases.

"The Supreme Court shall have no original jurisdiction, but shall be a court alone for the trial and correction of errors of law."

"The Court of Appeals shall have jurisdiction for the trial and correction of errors of law."

Amendment to the Constitution, Acts 1916, pp. 19 and 20.

And the verdict of a jury in Georgia, if supported by any evidence is conclusive on the Appellate Courts.

Davis vs. Kirkland, 1 Ga. Appeals, p. 7.

This has been the accepted doctrine in Georgia for many years. This Court may, therefore, realize the importance to the appellant to have the issues involved in this case determined in the Federal Court instead of being forced to litigate the question in the Superior Court of Emanuel County, Georgia, the domicile of the appellee.

Under Section 70 of the bankruptcy act, the trustee is vested by operation of law with the title of the bankrupt to all "(4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him;" and "creditors are powerless to pursue and enforce their rights, the Trustee is vested with their rights of action with respect to all property of the bankrupt encumbered or transferred by him in fraud of his creditors.

Collier Bankruptcy 9th Ed. p. 941, note 57.

In his effort to make out that the locus was not M. C. Coleman's, the respondent, E. J. Coleman, faced with the undisputed facts that for over 12 years M. C. Coleman had enjoyed and used the rents, issues and profits of the land as his own property without accounting for it, was forced to admit that the idea was that the M. C. Coleman could keep the rents until his death. On page 43, Record, the question was asked him:

Q. In other words to keep the rents until your death?

A. Yes sir.

Q. But if they get into trouble with creditors, you would go and take them away?

A. I will sir, just as sure as they get in that shape. I do not know sir, that I think that a fair arrangement."

We may well ask, how could a court of equity, where creditors' rights are involved, come to any other conclusion than that the transfer of the rent notes was a transfer of property of the bankrupt? The respondent and his son, make our a plain case whereby the son was to have the rents

until the death of the respondent; it was his own to do with as he pleased. They were forced to this admission because they could not get away from the positive fact that for 12 years the son had used the rents as his own property.

The learned Court below in his opinion on the question of jurisdiction (the merits not being decided), says:

> "Evidence favorable to the trustee's contention that the defendant had made a gift of the land to the bankrupt, goes no farther than the parties now deny that a gift ever was made. If there was a gift of the land, the title still is in the bankrupt, and he has made no transfer of it which a court of equity may cancel."—Record, pp. 54, 55.

We respectfully submit that the evidence for the trustee does go some degrees farther than the parties now deny that a gift was ever made. It goes so far as to show that a gift was made; that a conclusive gift appears from long possession, and no dominion exercised over the land by the parent, and by no disclaimer by the son or payment of rent during that time occurred; that thousands of dollars of improvements were made on the land by the son, and that he obtained credit by holding the land out as his own. That bona fide and permanent improvements had been erected by the son on the land after the gift and prior to 1905, and that the father admits that he did intend to give the son the land prior to 1905, but that after the survey in 1905 he made a proposition to the son which would mean that he wished to change the gift into an advancement, which the son rejected, but continued to hold and improve the land. We think language sometimes fails to express what we mean. We can not understand the statement of the judge of the lower Court that evidence favorable to the trustee's contention goes no farther than the parties now deny that a gift ever was made. Perhaps he meant to say, that evidence favor-

able to the trustee's contention that the defendant had made a gift of the land to the bankrupt is ample to prove the same, although the respondent and the bankrupt deny that a gift was made.

CONCLUSION.

The Court will appreciate the following uncontradicted testimony as to the title to the locus in quo.

1. THAT THE SAME WAS GIVEN THE BANKRUPT IN 1902 OR 1903 by actual verbal declarations of the parent and the assumption of possession by the son and the making of permanent and substantial improvements.

2. THAT THE SURVEY MADE IN 1905 MERELY PERPETUATED THE INTENT AND PURPOSE ON THE PART OF THE PARENT.

3. THE ALLEGED SUBSEQUENT ARRANGEMENT MADE SHORTLY AFTER 1905 AS CLAIMED BY THE PARENT WAS NOT ASSENTED TO BY THE SON THAT THIS ALLEGED ARRANGEMENT AMOUNTING TO MERELY A PROPOSITION TREATING THE LOCUS IN QUO AS AN ADVANCEMENT INSTEAD OF A GIFT. THE SON DID NOT ASSENT TO THE SAME AND ON THE CONTRARY CONTINUED TO MAKE IMPROVEMENTS EVEN AS LATE AS 1914. (Record, p. 23, tenth line).

4. THAT SEVEN YEARS AFTER 1903, A TITLE VESTED TO THIS LAND IN THE SON BY OPERATION OF GEORGIA CODE 1910, SECTION 4151, BY VIRTUE OF HIS EXCLUSIVE POSSESSION, THE NON-PAYMENT OF RENT, THE NON-DISCLAIMER OF TITLE, AND THE FAILURE OF THE PARENT TO EXERCISE DOMINION OVER THE LAND.

5. THAT IN 1915, within four months of bankruptcy, the son DISCLAIMED OWNERSHIP, TRANSFERRED $4,000.00 OF RENTS OF THE PROPERTY TO THE RESPONDENT, AND THE TENANT'S POSSESSION THEREBY BECAME THE POSSESSION OF THE RESPONDENT E. J. COLEMAN; RENTS HAVE BEEN COLLECTED BY E. J. COLEMAN CLAIMING HE IS OWNER, AND HE HAS RESISTED THE TRUSTEE'S RIGHT TO THE LAND AND TO THE RENTS OF THE LAND.

6. THAT SINCE 1915 AND THE ACTS AND TRANSFER THEN MADE, THE DISSEIZIN OF THE BANKRUPT ASSENTED TO BY HIM, BY THE RESPONDENT IF PERMITTED TO CONTINUE FOR SEVEN YEARS WOULD VEST A PRESCRIPTIVE TITLE IN THE RESPONDENT, by virtue of the paper title held by E. J. Coleman prior to 1902.

And that by virtue of these facts a transfer has been made which vests the Court with jurisdiction to grant relief to the trustee in bankruptcy.

Respectfully submitted,

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